



**Department of Labor
Center for Faith-based and Neighborhood Partnerships (CFBNP)
Partnership Opportunities For Organizations and Communities**

**Frequently Asked Questions On Federal Financial Assistance and
Protections for Religious Identity**

The following are answers to commonly asked questions that may arise in DOL programs. Although specific programs are identified, the principles also are intended to be useful in other similar program contexts. If you have questions that are not answered here, please consult your DOL program office through the program's project officer, contracting officer, or other responsible DOL official, or the intermediary (such as a State, local, or tribal government) through which you receive DOL support.

The section titled "General" contains questions and answers of general applicability.

The FAQs in the section titled "Indirect DOL Financial Assistance" only apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of indirect Federal financial assistance or recipients of Federal financial assistance provided indirectly. This category includes eligible providers of training services under section 122 of the Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128.

The FAQs in the remaining sections apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

General

The FAQs in this section contains questions and answers of general applicability.

Q: When did DOL's regulation, *Nondiscrimination in Matters Pertaining to Faith-based Organizations*, take effect?

A: *Nondiscrimination in Matters Pertaining to Faith-based Organizations* went into effect on May 4, 2016.

Q: By what date does my organization need to comply with these regulations, including the requirements to provide a written notice of beneficiary rights and provide referrals to alternative providers?

A: You must comply with these requirements by July 5, 2016, regardless of when you attained guidance for implementation of the regulations.

Q: Our organization received a new award or renewed a prior award before the effective date on May 4, 2016. Is our award subject to the requirements under these regulations?

A: In most cases, awards that were new or renewed before the effective date will not be subject to these regulations. Generally, recipients subject to this final regulation include recipients of an award of DOL financial assistance made on or after May 4, 2016. However, some awards made before the effective date of the regulation may contain conditions that would make this regulation apply. Recipients that have awards subject to these conditions would therefore have to comply with the regulation by the compliance date of July 5, 2016. Please consult your DOL program office through the program's project officer, contracting officer, or other responsible DOL official if you are unsure whether you must comply with the regulation by July 5, 2016.

Indirect DOL Financial Assistance

The FAQs in this section only apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of indirect Federal financial assistance or recipients of Federal financial assistance provided indirectly. This category includes eligible providers of training services under section 122 of the Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128.

Context for the FAQs in this section: My organization accepts vouchers (or certificates or other similar means of government-funded payment) from beneficiaries for a social service program that includes explicitly religious content (e.g., worship, religious instruction, religious counseling). A beneficiary recently stated that he objected to the religious content of the program.

Q: Can I refuse to accept the beneficiary or prospective beneficiary's voucher?

A: No. You cannot refuse to accept the beneficiary's voucher. An organization that participates in programs funded by indirect aid cannot turn away beneficiaries on the basis of religion or religious beliefs or lack thereof.

Q: Do I need to modify the content of my program to exclude the religious activities?

A: No. Because the beneficiary may use the voucher or other means to obtain services from a provider of their choice, you do not need to modify or remove the religious content of your services either.

Q: Do I need to provide the beneficiary with a written notice of beneficiary protections?

A: Not under E.O. 13559's requirements. Because the beneficiary may use the voucher or other means to obtain services from a provider of their choice, providing a written notice to such a beneficiary to seek referral to another provider is unnecessary under DOL's E.O. 13559 regulations. However, other grant programs may have additional notice requirements.

Q: Does the referral requirement apply to my program?

A: E.O. 13559's referral requirement does not apply to programs funded by indirect aid. However, your program may have its own referral requirements.

Explicitly Religious Activities

The FAQs in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: In addition to worship, religious instruction, and proselytizing, what are some other examples of “explicitly religious activities”?

A: Other examples of explicitly religious activities and materials include devotional exercises, production or dissemination of devotional guides or other religious materials, and counseling in which counselors introduce religious content. More specifically, in the context of social services, providing a devotional booklet to a migrant farmworker as part of their supportive services or including overtly religious content during a job skills course for returning citizens, are examples of social service activities that are explicitly religious. While it is not feasible to develop a comprehensive list of all “explicitly religious activities,” each of these is an example of an activity that is not religiously neutral because it promotes or endorses religion to beneficiaries.

Q: Are there examples of activities in which DOL-funded staff may refer to religion without violating the prohibition against “explicitly religious activities”?

A: Yes. Any reference to religion should be viewed in its full context to determine whether the activity is neutral to religion, and whether there are instances in which religious references made by program administrators, instructors, or officials are neutral to religion. For example, staff in programs supported by direct DOL financial assistance may not provide devotional religious instruction, but, where consistent with the purposes of the program, they may reference religion in other ways. For example, instructors in civics education courses for youth or returning citizens may discuss the religious liberty guarantees of the First Amendment. Just as public schools may teach about religion, such as the history of religion, comparative religion, literary and other analysis of the Bible and other scripture, and the role of religion in the history of the United States and other countries, staff in DOL-supported social service programs may discuss religion in these ways. In such cases, the aim is not to inculcate faith but to recognize our country's tradition of religious freedom and the fact that religion plays important roles in the lives of some individuals and communities.

Program Materials

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: What should I do if I have considered whether materials for my Federally-supported program are neutral toward religion, but I am still not certain?

A: If award-recipient staff reviewed the materials to be used in their DOL-supported social service programs but have remaining concerns as to whether the materials are neutral to religion, they may contact their DOL program office through the program's project officer, contracting officer, or other responsible DOL official with their concern.

Statements Made by Beneficiaries in Programs and Class Assignments

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: If a staff person in our DOL-supported social service program (e.g., a civics education course for youth or returning citizens) provides participants or other program beneficiaries with an assignment to give an oral or written report, should the instructor also prohibit the participants from endorsing any religious or anti-religious views in their response?

A: No. Participants and other beneficiaries may express their beliefs about religion in homework, artwork, and other written and oral assignments free from religious discrimination. Such home and classroom work should be judged by ordinary standards of substance and relevance and against other legitimate pedagogical concerns identified by the school or service provider. Thus, if an instructor assigns a written assignment, and the participant references his or her religious beliefs in it, the instructor should judge the assignment on academic standards and neither penalize nor reward the participant on account of the religious content.

Classroom and Similar Discussions

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: May staff lead a discussion in a DOL-supported social service program in which the beneficiaries refer to their religious beliefs?

A: Yes. The basic principle is that beneficiaries may express their religious beliefs, while staff must remain neutral. When social service providers or other DOL-supported social

service programs permit beneficiaries to express their views and staff neither invite nor endorse specifically religious speech, then the speech is not attributable to the government, and its expression is both permissible and protected. For example, if in a group discussion about surviving through an economic crisis, a beneficiary on his own initiative talked about how religion helped him through the difficult time, then that would be permissible and protected. On the other hand, if a counselor initiated a discussion about the importance of religion in coping and overcoming hardship, deliberately chose individuals to speak because they would speak about religious issues, or deliberately avoided calling on those who would talk about values from a secular perspective, that would be impermissible.

To take another example, a course instructor is teaching a civics course to permanent residents to prepare them to apply for naturalization. The course syllabus includes a discussion on the ways in which various religious traditions have helped shape American society and government as well as the importance of religious liberty and the meaning behind the principle of Separation of Church and State. If during one such discussion, a participant comments on his or her Christian beliefs, the instructor may acknowledge that American citizens have the right to religious liberty under the First Amendment. It, however, would be inappropriate for the instructor to say or imply that the participant's comment is irrelevant to the topic, since such a statement would violate the principles of neutrality with respect to religion.

Q: If we invite guest speakers to talk to the beneficiaries in our DOL supported program, do we need to prohibit the guest speakers from referring to religion?

A: No, however, it is important to remember that the Federal government, and the programs that it supports, must be neutral toward religion. When a program receiving direct DOL financial assistance invites speakers to address program participants, it should neither favor nor disfavor religious speech. To adhere to the neutrality principle, there are a number of factors that a recipient of direct DOL financial assistance might consider in inviting speakers to a forum that it sponsors: whether to establish at the beginning of the program that the recipient does not necessarily endorse the perspectives of each speaker, whether to invite a panel of speakers rather than a single speaker to offer a variety of viewpoints, and whether the recipient is likely to know in advance the content of a speaker's presentation. In selecting speakers to address program participants who are minors, such as in YouthBuild or Job Corps, recipients should be mindful of parental concerns and aware that children may be more vulnerable to persuasion than adults.

Prayer

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: Are there circumstances in which persons attending a DOL-supported program may choose to pray on their own during the program?

A: Yes. Attending a Federally-supported program does not affect an individual's right to pray. As a general matter, program beneficiaries may engage in prayer, subject to the same rules designed to prevent material disruption of the program that are applied to any other privately-initiated speech.

Religious Settings or Facilities

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: May a social service provider that has received a DOL grant to conduct presentations that are neutral to religion accept an invitation to present at a religious setting such as a church or church-affiliated summer school as a part of that DOL program?

A: Yes. A social service provider should handle requests for presentations in an even-handed fashion that neither favors nor disfavors religion, a particular religious institution, or the religious affiliation of those in attendance. Project services should be offered in a religiously neutral way, and decisions about where to offer presentations or provide services should be made on criteria that are relevant to the program, such as efficiency, need, public requests, or geographic balance, rather than on any criteria that are related to religion.

Q: May DOL-supported social service programs provide services in the same facility that houses a religious library?

A: Yes. The availability of religious texts in a library would present a legal concern if the administrators, instructors, or other officials also urged persons who receive DOL-supported services to read the material.

Availability of Other Programs

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: May a DOL-supported social service programs provide applicants and beneficiaries with a list of other available programs that includes programs with explicitly religious content?

A: Yes. If the organization has developed a list of "available programs," rather than recommended programs or referrals, based on religiously neutral criteria such as service providers in the immediate geographic region, then that list may include programs with secular content and programs with explicitly religious content.

Outreach and Recruitment

The requirements in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: Does the prohibition against using religious criteria to select beneficiaries in DOL-supported programs mean that DOL-supported social service providers must ensure that program participants represent a variety of faith traditions?

A: No. DOL-supported social service programs need to be accessible to applicants and participants irrespective of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. This does not mean that a legal concern necessarily arises where most participants in a target area are of a single religious tradition because, for example, the program is located in a region where the population has a predominant faith tradition. The representation of religious backgrounds among those attending a program may vary for reasons unrelated to the recipient's eligibility criteria. However, a DOL-financed service provider is prohibited from selecting a target group of participants or tailoring recruitment efforts based on religious affiliation.

Q: If my DOL-supported social service program has a separate and distinct religious component, and the program serves youth, does my program need to obtain parental consent to invite the youth to the religious activities?

A: Yes. If a DOL-supported social service program serves youth, the program should obtain parental consent to invite the youth to any separate and distinct religious activities, because parental consent will help ensure that any participation is voluntary. If a parent fails to provide consent, the program should ensure that those youth are not present when any invitation to a religious activity is extended.

Q: May a Federally-supported program for youth initiate loudspeaker invitations to attend separate religious activities that will be held in another room of the facility?

A: Yes, so long as the invitations are brief and non-coercive and it is clear that the religious activities are separate, privately funded, and voluntary for beneficiaries. The demarcation between the DOL-supported program and the religious program must at all times be clear. Participants must be aware that they are not required to attend the religious program. As participants are minors in this case, the program should obtain parental consent to invite the youth to the religious activities, because parental consent will help ensure that any participation is voluntary. If a parent fails to provide consent, the program should ensure that those youth are not present when an invitation to a religious activity is extended.

The service provider may not pay for the cost of religious services or any invitations to attend those services with DOL financial assistance.

Beneficiary Protections

The FAQs in this section apply to those DOL-supported social service programs, DOL social service programs, or DOL programs that are either recipients of direct Federal financial assistance or recipients of Federal financial assistance provided directly.

Q: What does it mean for a beneficiary to object to the “religious character” of an organization?

A: The protections required by the regulations arise when a beneficiary objects to the “religious character” of an organization that provides DOL-supported services. If, for example, a beneficiary objects to the fact that a training course is administered by a specific religious group, such objection would relate to the organization’s “religious character.” By contrast, if the beneficiary objects only to the religion of the course instructor, there is no objection to the “religious character” of the organization, and therefore the protections that this rule affords are not implicated.

But, in general, DOL does not intend, and does not expect recipients or intermediaries, to scrutinize the religious nature of a beneficiary’s objection. Rather, in order for a beneficiary’s objection to trigger the referral requirements under this rule, it must be reasonably clear under the circumstances that the beneficiary is objecting to the organization because of its religious character. For example, a prospective beneficiary objects to receiving services from a recipient because the beneficiary is uncomfortable with receiving services in a location with religious symbols. Recipients should take reasonable steps to identify a suitable referral whenever a beneficiary asserts an objection based on the religious character of an organization.

An objection to “religious character” is wholly separate and distinct from an objection to explicitly religious activities that an organization conducts without separation in either time or location from activities that are supported with direct DOL financial assistance. As explained above, the integration of explicitly religious activities into a program supported with direct DOL financial assistance is prohibited.

Q: If a beneficiary objects to the religious character of an organization, in what form must the objection be made?

A: A potential beneficiary may object orally or in writing, as long as the organization keeps a written record of the referral. Beneficiaries are not required to follow any specific format in making an objection, but it must be reasonably clear under the circumstances that he or she objects to the service provider because of its religious character. The objection may include the individual’s name unless he or she has withheld it or asked that it not be recorded. If a beneficiary withholds his or her name, the organization must inform the beneficiary that it will not be able to follow up on the referral. Under no circumstances, however, may an organization violate applicable privacy laws and regulations in following up with beneficiaries. Subject to the organization’s reporting obligations to the funding agency, the organization must keep the personal and identifying information of prospective beneficiaries confidential.

The Department's final regulations include a Beneficiary Referral Request form for a prospective beneficiary to request a referral if the beneficiary objects to the religious character of the service provider. The Beneficiary Referral Request form provides beneficiaries with a way to state their objections clearly and also facilitates the organization's compliance with the requirement to keep a record of any successful or unsuccessful referral attempts.

Q: What content is required for the beneficiary referral request form?

A: DOL developed a Beneficiary Referral Request form which provides beneficiaries with a way to state their objections clearly and also facilitates your organization's compliance with the requirement to keep a record of any successful or unsuccessful referral attempts. The form states:

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

☐ I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

☐ Please follow up with me.

Name:

Best way to reach me (phone/address/email):

☐ Please follow up with the other service provider.

☐ Please do not follow up.

All the beneficiary has to do is check whether the beneficiary wants to be referred, whether follow up is desired, and, if so, whether the beneficiary would like a personal follow up or a follow up with the alternative provider. Any efforts to follow up regarding the success of the alternative placement can be documented by just adding notes to the form, stating the date the referral was made, the name of the alternative provider and its address, plus the contact information for the alternative provider.

A formatted version of the Beneficiary Referral Request form is provided in the Appendix to this document. Please consult your DOL program office through the program's project officer, contracting officer, or other responsible DOL official if you encounter a problem using the Beneficiary Referral Request form.

Q: Is the referring organization responsible for any additional costs that the beneficiary incurs as a consequence of being referred to an alternative provider?

A: No. The referring organization is not under an obligation to subsidize transportation costs or other increased cost burdens that the beneficiary incurs as a consequence of pursuing a

referral to an alternative provider. However, to the extent that various alternative providers are available, referring organizations are encouraged to take into account the cost to the beneficiary in determining which provider is most appropriate for referral.

Q: What constitutes an appropriate and timely referral?

A: Whether a referral is appropriate and timely will depend on the circumstances of each situation. When the nature of the service is urgent, or easily identifiable alternative providers are known to operate in close proximity, a timely referral must be offered in a shorter period of time than when the nature of the service is not as urgent, and alternative providers are difficult to identify in reasonable geographic proximity. For example, a referral to emergency assistance for migrant and seasonal farmworkers should be made in less time than a referral for long-term services, such as employment training received through an eligible training provider. Some of the considerations that should be made in determining the appropriateness of an alternative provider include: distance, available transportation options, cost, and the availability of services comparable to the services offered by the referring organization. When services are offered by telephone, long distance fees should be considered as a potential cost and, when services are offered by internet, the beneficiary's internet access should be considered.

Q: Do organizations need to notify DOL or the intermediary awarding entity when it is unable to refer an objecting beneficiary?

A: When an organization determines that it is unable to identify an alternative provider, the organization shall promptly notify DOL or the intermediary awarding entity. Prompt reporting is necessary so that DOL or the intermediary awarding entity is able to begin looking for an alternative provider. A DOL social service intermediary provider that receives a request for assistance in identifying an alternative provider may request assistance from DOL.

Q: Do the obligations of this rule apply to recipients of sub-awards?

A: Yes. Recipients must ensure that all sub-recipients are aware of the requirements of this regulation. Sub-recipients must record and report any unsuccessful referrals to alternative providers, and request assistance in identifying an alternative provider from the intermediary awarding entity. Regardless of how sub-recipients record referrals, intermediaries are responsible for the compliance of sub-recipients with Federal civil rights laws.

Q: If an organization considers itself to be religious or faith-based but does not offer any religious activities, must it provide the written notice to beneficiaries?

A: Yes. Some beneficiaries may object to receiving services from a faith-based or religious provider, so beneficiaries should be notified about their ability to register such objections.

Q: Will a provider's religious affiliation be taken into account in the awards decision-making process in an effort to ensure that beneficiaries do not object to the religious character of

a provider? In other words, would it be better for awards decision-makers to make an award to a secular provider over a religious provider in order to avoid such objections?

A: No. Executive Order 13279, as amended by Executive Order 13559, clearly indicates that a reviewer must not take a provider's religious affiliation or lack of religious affiliation into account in the awards decision-making process. Decisions about awards of DOL financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

Q: Do intermediaries have an obligation to fund a secular alternative if they fund a faith-based organization?

A: No. Although intermediaries may serve as a resource to identify a comparable alternative service provider when a beneficiary objects to the religious character of a DOL-funded faith-based organization, intermediaries have no obligation to fund a secular alternative when they fund a faith-based organization. In the grant-making process, an intermediary may not consider the religious or secular character of an applicant organization in making a grant award.

Please note: Throughout this appendix, the term “beneficiary” includes a prospective beneficiary.

APPENDIX

NOTICE OF BENEFICIARY RELIGIOUS LIBERTY PROTECTIONS

[Insert Name of Organization]:

[Insert Name of Program]:

[Insert Contact information for Program Staff (name, phone number, and e-mail address, if appropriate)]:

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) We must separate out in time or location any privately-funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) If you object to the religious character of an organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection. We cannot guarantee, however, that in every instance, an alternative provider will be available; and

(5) You may report violations of these protections to, or file a written complaint of any denials of services or benefits by an organization with, the U.S. Department of Labor's Civil Rights Center, 200 Constitution Ave., N.W., Room N-4123, Washington, D.C. 20210, or by e-mail to CivilRightsCenter@dol.gov.

This written notice must be given to you prior to the time you enroll in the program or receive services from such programs, unless the nature of the service provided or urgent circumstances makes it impracticable to provide such notice in advance of the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

– End of Form –

BENEFICARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

☐ I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

☐ Please follow up with me.

Name:

Best way to reach me (phone/address/email):

☐ Please follow up with the other service provider.

☐ Please do not follow up.

– End of Form –